

Indiana Public Defender Commission Meeting Minutes

June 23, 2010

Chairman Mark Rutherford called the business meeting to order at 2:03 pm. Commission members in attendance were Susan Carpenter, Peter Nugent, Sen. Brent Steele, Sen. Timothy Lanane, Hon. Mary Ellen Diekhoff, and Rep. Greg Steuerwald. Also in attendance were staff counsels Deborah Neal and Michele Lofthouse, Administrative Assistant Yolanda Collins, and Paula Sites of the Indiana Public Defender Council. Guests in attendance included Marvin Smith and David Schneider from the Lake County Public Defender's Office, Steve Raquet from Howard County, and Bob Hill and Ann Sutton from the Marion County Public Defender Agency. Introductions were made, and Marion County's report on D felony requirements was added to the agenda as item 5A.

Approval of Minutes from 3/24/10 Meeting: Sen. Steele moved to approve the minutes, and Peter Nugent seconded the motion. There was no discussion or opposition. The minutes were approved.

LaGrange County Comprehensive Plan: Paragraph B1 of the plan was amended by LaGrange County to take out the language regarding judges' approval of contracts. Staff counsel recommended that the amended plan be approved. Tim Lanane made the motion to approve LaGrange County's Comprehensive Plan and Susan Carpenter seconded the motion. There was no discussion. The motion passed unanimously.

Representatives from Howard County: Steve Raquet, Howard County's Chief Public Defender, appeared before the Commission to explain why 9 out of 18 public defenders are out of compliance and to request that reimbursement not be suspended. Mr. Raquet reported as follows:

- G. Cook was full time, and then went to part time, which skewed his numbers. The full time assignments are now gone, and he is in compliance.
- M. Dabrowski and B. Dechert were just slightly over, and are now in compliance.
- K. Noel and B. Hamilton were assigned to the same court, and an unusual number of cases were filed in that court. They are still over, but their numbers have gone down, and they will be in compliance by next quarter. Mr. Raquet is in the process of moving around court assignments.
- A. Vandenbosch's number has gone down. The other attorney in Mr. Vandenbosch's court was suspended by the Disciplinary Commission for thirty days, which increased Vandenbosch's numbers. He is now in compliance.
- S. Doran was full time. It will take two quarters to get into compliance. Her number has gone down.
- Johnson handles mental health hearings and contempt citations, and they were being counted incorrectly. This was Mr. Raquet's mistake, and it has been corrected. Johnson is now in compliance.
- Rosselot normally handles non-reimbursable cases, but she was assigned one D-felony last quarter that put her over. That has been corrected.

Mr. Raquet reported that the Howard County Council approved a budget for 2011 that includes an additional attorney. Mr. Raquet assured the Commission that one more public defense attorney will help with extra cases that are assigned out of any particular court.

Sen. Steele asked about the attorney that had been suspended. Mr. Raquet stated that it was due to mental health issues. The attorney is on probation and is to continue with counseling. The issues should not repeat.

Sen. Steele made the motion to accept Mr. Raquet's assurances that the program is moving towards compliance and that Howard County's request for reimbursement be paid. Susan Carpenter seconded the motion. There was no discussion other than to note that the county has made great progress towards compliance. All Commission members were in favor of reimbursing Howard County's claims, and the motion passed.

Representatives from Lake County: David Schneider appeared before the Commission to request that public defender salaries be transferred from the general fund to the supplemental fund. He stated that the goal of the public defender office is to be on a level playing field with the prosecutor. The county council made him cut 15% of his budget last year (or seven positions). The prosecutor's office has five attorneys in each court. He has four in most courts and five in one. He is mindful of keeping all of his defenders in compliance. He has shifted cases around to keep in compliance and hired overflow counsel from the conflict list.

Mr. Schneider requested that the County Council transfer salaries from the general fund to the supplemental fund. The reimbursement from the Commission goes to plug holes in other areas of the budget. The Council has asked the office to cut another 8.5%. Mr. Schneider stated that after speaking with Larry Landis and Commission counsel, he understands that money for raises can come from the supplemental fund, but that salaries cannot be transferred wholesale to that fund. He just wanted to make the Commission aware, although he is not sure what the Commission can do. His office is trying to do the best it can. Mr. Schneider indicated that it may come to a point next year where the office will have to refuse cases.

Chairman Rutherford asked whether the county is not applying the funds that the Commission reimburses to public defense costs. Mr. Schneider said that is true, but that is just one of the issues. Last year, he had to cut seven people, but the prosecutor's office made no cuts because of the rainy day funds. The office is still in compliance, but Mr. Schneider is worried about it. Any increase in caseload could cause the attorneys to be out of compliance. The county council doesn't care about reimbursement. The council essentially told him last year that if he had not cut seven people, the council would have gone back to the 2001 amounts, and who cares about the reimbursement. The council has the attitude that the money will come from elsewhere.

Mr. Schneider reiterated that he is in favor of a state system. Sen. Lanane asked whether the General Assembly should look at the supplemental fund use and whether the state should take it over. Chairman Rutherford noted that he did not think there was anything that the Commission could do at this time, other than note the issues raised by Mr. Schneider.

Representatives from Marion County: Robert Hill, Marion County's Chief Public Defender, reported on the Marion County timekeeping study that started in 2008. The original purpose of the study was to reevaluate the time taken to handle a Class D felony case in counties that have Class D felony only courts. The study showed that full-time attorneys handling Class D felonies only in Class D felony only courts could capably handle 225 cases rather than the recommended 150. The Commission asked Marion County to expand this study to all felonies. Marion County is the first public defense program to complete a time study in the State of Indiana. It has provided quite a bit of information, and will allow the office to provide services more efficiently.

Mr. Hill noted that while his office is down ten lawyers, he has been able to give raises and the office is doing a good job managing compliance. Marion County does have very specialized courts which results in some economies of scale and shared experiences. They have found a difference in the time it takes to handle cases in a drug court versus all other types of courts. They are still trying to determine why there is such a time discrepancy. Mr. Hill thinks that it is because the drug major felony cases are somewhat cookie cutter. There are basically only four types of cases, and witnesses are typically non-civilian. This eliminates the need for depositions of civilian witnesses and therefore it doesn't take as much time. It could be that lawyers are becoming complacent. If that is the case, that is something that Mr. Hill would have to deal with as a manager, but he has not determined that that is the situation.

Depending on the results of the study, Marion County may suggest that there be a special guideline for cases in limited, specialized courts. For instance, a separate standard for drug courts may be recommended. Ms. Carpenter asked what amount of time is being spent on sentencing. Mr. Hill did not know off the top of his head, but noted that the attorneys are keeping track of their time just like is done for a death penalty, PCR or civil case. There was some resistance to tracking time, but efficiency has been tied to raises.

Sen. Steele asked whether Mr. Hill has copies of the time sheets. He does, and the timesheet are itemized such that sentencing should be able to be broken out. However, to get a solid idea of time spent on activities just for sentencing, more specificity may be needed. For example, recording "time spent with family" versus "time spent with family for purposes of sentencing hearing." Mr. Hill noted that with drug cases, sometimes there are incentives not to do anything. It can be in the client's best interest to take the first offer because of the potential for upcharges and harsher penalties.

Chairman Rutherford inquired as to whether Mr. Hill had seen any benefits to keeping track of time other than character building. Mr. Hill stated that it has allowed the attorneys to see the time spent, and to think about whether they did all they could. It has been a self-instructive device. Sen. Lanane asked whether Marion County could figure out the pleas in each category. Mr. Hill stated that this information is not easily available. The information will have to be recorded manually, but it can be captured.

Mr. Hill echoed Lake County's comments about the budget situation. He said it is different because Marion County does care about the reimbursement, but it does go to the General Fund. It makes it hard for public defender offices to make revenue.

Staff Counsel Memoranda. Because Mr. Nugent had to leave at 3:15, Deborah Neal first reported on those counties having issues that may impact reimbursement.

Tippecanoe County: Tippecanoe County is having issues with compliance, but Ms. Neal is not recommending that reimbursement be withheld this quarter. The problems are out of the control of the chief public defender. The judges were appointing attorneys from the bench without keeping track of appointments, without using a rotation system, and without regard for the standards. They now have a new system for appointment of the assigned counsel cases, and there is an appearance form that each appointed counsel must provide to the public defender's office. This will allow for better record keeping. The county was warned a year or so ago, and they did make improvements. Ms. Neal realized that the cases assigned from the bench by the judges were not being included in the totals. There was no exception in the comprehensive plan that allowed assigned counsel cases to not be counted. One attorney's FTE is at 4.000 (maximum 1.000). This is a way for the courts to avoid non-compliance – assign cases from the bench and then not count them.

Chairman Rutherford asked whether a representative should come to the next meeting. Mr. Nugent recommended that payment be suspended this quarter because a 4.000 FTE is ridiculous. The public defender's office had to know about this because that is a lot of cases. Sen. Lanane asked how prevalent is the practice of judge's making appointments for conflicts and overflow? Ms. Neal stated that Tippecanoe County would have been at the meeting but she indicated to them that they would not be facing suspension. The county did provide some materials explaining some of the issues if that helps the Commission with regard to suspension.

Compliance Summary and Warning Letters: Ms. Neal reported that there are other counties out of compliance, but not significantly enough to suspend payment. The numbers are not big. Kosciusko has an open 90-day letter and is being watched. Clark County was sent a warning.

Financial Status of Public Defense Fund: There is no money in the Fund until July 1, 2010. The state took money from the fund again without notifying us, but the auditor caught it. The money has now been returned to the fund. Ms. Neal provided an updated Fiscal Report spreadsheet.

Requests for 50% Reimbursement in Capital Cases: Michele Lofthouse reported that capital claims totaled \$157,154.52 for this quarter, and explained the rationale for the nominal deductions. She also brought to the Commission's attention that Madison County submitted a claim on the Wisheart matter that included payments that were all outside of the 120-day period. However, staff counsel did recommend that they be paid. Chairman Rutherford asked whether the claims would have been appropriate if they were submitted within 120-day. Ms. Lofthouse reported yes. Sen. Lanane moved to approve payment of capital claims in the amount of

\$157,154.52, and Ms. Carpenter seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION Reimbursement Requests in Capital Cases June 23, 2010		
COUNTY	DEFENDANT	TOTAL
Madison	Wisehart 1	\$18,632.56
	Wisehart 2	\$18,114.46
Marion	Allen	\$38,005.26
	Allen	\$29,244.50
	Davis	\$22,036.15
	Turner	\$2,445.00
Putnam	Stevens 1	\$5,950.91
	Stevens 2	\$5,527.69
	Stevens 3	\$8,914.79
	Stevens 4	\$5,460.27
Spencer	Ward	\$2,822.93
TOTAL		\$157,154.52

Requests for 40% Reimbursement in Non-Capital Cases: Deborah Neal reported claims in non-capital cases totaled \$3,748,211.96. Mr. Nugent moved to approve all of the claims except for Tippecanoe County which should be addressed separately. He also had a question about Blackford County. He asked where the county is going. Ms. Neal reported that the attorney numbers are getting better and they are moving in the right direction. This is the county that has very few attorneys and struggles to find criminal defense attorneys from surrounding counties to take public defense cases. Sen. Lanane seconded the motion. The motion passed unanimously to approve claims in the amount of \$3,605,341.16.

With regard to Tippecanoe County, Ms. Carpenter stated that it was Ms. Neal's impression that it was not in bad faith. The public defender did not have control. She has been working with Ms. Neal, went to the judges, and has been working toward a plan to come into compliance. Some of the cases are very old and not all of the numbers are reliable. The cases are being counted when they are being billed, which is not necessarily close in time to the quarter that they were assigned. Mr. Nugent moved to suspend Tippecanoe County's payment. Judge Diekhoff stated that her concern is that the county thought they were going to receive reimbursement this month. The motion died for a lack of second. Sen. Lanane moved to approve the \$142,870.80 reimbursement amount but issue a letter asking them to appear at the next meeting. Sen. Steele

seconded the motion. Mr. Nugent opposed the motion; all others were in favor. The motion passed, making the total for non-capital reimbursements \$3,748,211.96.

Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION First Quarter 2010 Requests for Reimbursements in Non-Capital Cases 6/23/2010							
COUNTY	Late Factor	2010 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	0.00	1/01 - 03/31	\$83,922.19	\$21,384.96	25%	\$62,537.23	\$25,014.89
ALLEN	0.00	1/01 - 03/31	\$787,810.87	\$102,854.68	13%	\$684,956.19	\$273,982.48
BENTON	0.00	1/01 - 03/31			#DIV/0!	\$0.00	\$0.00
BLACKFORD	0.00	1/01 - 03/31	\$33,480.78	\$8,522.38	25%	\$24,958.40	\$9,983.36
CARROLL	0.00	1/01 - 03/31	\$44,800.31	\$8,023.40	18%	\$36,776.91	\$14,710.76
CLARK	0.00	1/01 - 03/31	\$151,789.83	\$24,735.89	16%	\$127,053.94	\$50,821.58
CRAWFORD	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
DECATUR	0.00	1/01 - 03/31	\$39,557.88	\$10,905.15	28%	\$28,652.73	\$11,461.09
FAYETTE	0.00	1/01 - 03/31	\$72,831.10	\$21,420.91	29%	\$51,410.19	\$20,564.08
FLOYD	0.00	1/01 - 03/31	\$137,695.33	\$27,417.86	20%	\$110,277.47	\$44,110.99
FOUNTAIN	0.00	1/01 - 03/31	\$17,459.78	\$3,010.31	17%	\$14,449.47	\$5,779.79
FULTON	0.00	1/01 - 03/31	\$49,912.98	\$16,205.51	32%	\$33,707.47	\$13,482.99
GRANT	0.00	1/01 - 03/31	\$189,181.00	\$20,793.00	11%	\$168,388.00	\$67,355.20
GREENE	0.00	1/01 - 03/31	\$85,706.70	\$12,885.18	15%	\$72,821.52	\$29,128.61
HANCOCK	0.00	1/01 - 03/31	\$99,153.12	\$27,117.26	27%	\$72,035.86	\$28,814.34
HENRY	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
HOWARD	0.00	1/01 - 03/31	\$348,776.50	\$58,346.97	17%	\$290,429.53	\$116,171.81
JASPER	0.00	1/01 - 03/31	\$50,879.07	\$15,847.58	31%	\$35,031.49	\$14,012.60
JAY	0.00	1/01 - 03/31	\$72,017.87	\$9,780.53	14%	\$62,237.34	\$24,894.94
JENNINGS	0.00	1/01 - 03/31	\$50,068.68	\$10,110.05	20%	\$39,958.63	\$15,983.45
KNOX	0.00	1/01 - 03/31	\$145,876.12	\$49,131.12	34%	\$96,745.00	\$38,698.00
KOSCIUSKO	0.00	1/01 - 03/31	\$132,472.07	\$49,257.14	37%	\$83,214.93	\$33,285.97
LAGRANGE	0.00	1/01 - 03/31	\$23,656.66	\$1,237.08	5%	\$22,419.58	\$8,967.83
LAKE	0.00	1/01 - 03/31	\$929,917.77	\$6,690.06	1%	\$923,227.71	\$369,291.08
LAPORTE	0.00	1/01 - 03/31	\$141,075.69	\$17,564.35	12%	\$123,511.34	\$49,404.54
MADISON	0.00	1/01 - 03/31	\$344,486.65	\$31,415.33	9%	\$313,071.32	\$125,228.53
MARION	0.00	1/01 - 03/31	\$3,865,942.15	\$692,060.43	18%	\$3,173,881.72	\$1,269,552.69

MARTIN	0.00	1/01 - 03/31	\$19,715.90	\$9,814.76	50%	\$9,901.14	\$3,960.46
MIAMI	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
MONROE	0.00	1/01 - 03/31	\$391,121.90	\$65,423.45	17%	\$325,698.45	\$130,279.38
MONTGOMERY	0.00	1/01 - 03/31	\$117,913.95	\$58,142.06	49%	\$59,771.89	\$23,908.76
NEWTON	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
NOBLE	0.00	1/01 - 03/31	\$95,690.13	\$15,049.00	16%	\$80,641.13	\$32,256.45
OHIO	0.00	1/01 - 03/31	\$34,774.53	\$5,304.04	15%	\$29,470.49	\$11,788.20
ORANGE	0.00	1/01 - 03/31	\$56,709.11	\$11,341.82	20%	\$45,367.29	\$18,146.92
PARKE	0.00	1/01 - 03/31	\$26,840.09	\$4,509.14	17%	\$22,330.95	\$8,932.38
PERRY	0.00	1/01 - 03/31	\$125,048.05	\$26,244.65	21%	\$98,803.40	\$39,521.36
PIKE	0.00	1/01 - 03/31	\$82,360.94	\$25,420.04	31%	\$56,940.90	\$22,776.36
PULASKI	0.00	1/01 - 03/31	\$25,595.53	\$3,328.00	13%	\$22,267.53	\$8,907.01
RUSH	0.00	1/01 - 03/31	\$58,607.43	\$17,837.04	30%	\$40,770.39	\$16,308.16
SAINT JOSEPH	0.00	1/01 - 03/31	\$487,657.41	\$62,309.46	13%	\$425,347.95	\$170,139.18
SCOTT	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
SHELBY	0.00	1/01 - 03/31	\$100,458.39	\$11,690.12	12%	\$88,768.27	\$35,507.31
SPENCER	0.00	1/01 - 03/31	\$28,539.50	\$4,006.00	14%	\$24,533.50	\$9,813.40
STEUBEN	0.00	1/01 - 03/31	\$75,288.18	\$15,493.24	21%	\$59,794.94	\$23,917.98
SULLIVAN	0.00	1/01 - 03/31	\$28,412.81	\$15,442.27	54%	\$12,970.54	\$5,188.22
SWITZERLAND	0.00	1/01 - 03/31	\$48,934.12	\$14,655.96	30%	\$34,278.16	\$13,711.26
TIPPECANOE	0.00	1/01 - 03/31	\$481,412.49	\$124,235.48	26%	\$357,177.01	\$142,870.80
UNION	0.00	1/01 - 03/31	\$13,714.77	\$2,880.08	21%	\$10,834.69	\$4,333.88
VANDERBURGH	0.00	1/01 - 03/31	\$553,578.64	\$87,794.16	16%	\$465,784.48	\$186,313.79
VERMILLION	0.00	1/01 - 03/31	\$25,806.80	\$13,436.60	52%	\$12,370.20	\$4,948.08
VIGO	0.00	1/01 - 03/31	\$382,158.54	\$77,963.13	20%	\$304,195.41	\$121,678.16
WABASH	0.00	1/01 - 03/31	\$55,894.10	\$7,931.23	14%	\$47,962.87	\$19,185.15
WARREN	0.00	1/01 - 03/31	\$6,442.00	\$2,605.00	40%	\$3,837.00	\$1,534.80
WASHINGTON	0.00	1/01 - 03/31	\$108,273.54	\$29,316.20	27%	\$78,957.34	\$31,582.94
TOTAL			\$11,329,419.95	\$1,958,890.06		\$9,370,529.89	\$3,748,211.96

Additional Staff Memorandum Reports: Ms. Neal wanted to bring to the Commission's attention the number of counties that are interested in coming into the program. If they all came in and were eligible for reimbursement in 2011, that would require an additional \$750,000.00 in the Fund in order to reimburse everyone at 40%.

Collateral Costs of Conviction: Juvenile collateral costs were a topic of discussion at the DOJ Symposium in Washington, D.C. in February 2010. Ms. Lofthouse conducted research into the collateral costs of both juvenile adjudications and adult convictions, and put the information into memo form. Staff counsel intends to make the memo one of the articles in an upcoming Public Defender Commission newsletter. However, the purpose of the research project was to bring these collateral costs to light for others within the justice system. If anyone else knows of a group or organization that could benefit from the information, please pass it along.

Other Matters: Paula Sites had nothing to report. Chairman Rutherford reported that Larry Landis was not able to attend because he qualified for the Indiana Amateur Tournament.

Ms. Neal provided a spreadsheet that includes the public defense costs reported by all 92 counties, regardless of whether they are in the reimbursement program.

Adjournment: The next Commission meeting is scheduled for September 22, 2010. There being no further business to discuss, Sen. Lanane moved to adjourn the meeting, and Sen. Steele seconded the motion. The motion passed and the meeting adjourned at 3:13 p.m.

Mark Rutherford, Chairman

Date